

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

Crl. Misc. M-21420 of 2013 (O&M)
Date of Decision: March 26, 2018

Vandana Shukla

...Petitioner

Versus

Harish Sethi and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. K.S. Dadwal, Advocate
for the petitioner.

Mr. Talwinder Singh, Advocate for
Mr. Hemant Saini, Advocate
for respondents No.1 to 6.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 16.01.2013 passed by the trial court and impugned order dated 17.05.2013 passed by the Revisional Court vide which the application under Section 311 Cr.P.C. filed by the petitioner has been dismissed.

2. The brief facts are that on the statement of petitioner an FIR No.177 dated 07.12.2007 was registered under Sections 406, 498-A of Indian Penal Code at Police Station Division No.7, Jalandhar against respondents No.1 to 6. After investigation of matter, a report under Section 173 Cr.P.C. was submitted in the court, however, at time time of submission

of the report under Section 173 Cr.P.C., the Investigating Officer did not attach the receipts of some of the dowry articles, as these receipts were not easily available at that time. The petitioner was able to locate the original receipts of the dowry articles/*istridhan* and thereafter, moved an application under Section 311 Cr.P.C. seeking permission to place them on record the same and get them exhibited. The application came to be rejected by the impugned order and subsequently, the revision petition too. Aggrieved, the instant petition has been filed.

3. Learned counsel for the petitioner contends that the production of the original receipts pertaining to purchase of dowry articles/*istridhan* are material documents to establish that these articles had been given at the time of the marriage and the dowry stands misappropriated by the accused. It is argued that examination-in-chief of the petitioner/complainant is yet to be completed, therefore, no prejudice is going to be caused to the accused persons, as the trial of the case is at a initial stage.

4. Per contra, learned counsel appearing on behalf of the respondents argues that no dowry articles were ever entrusted to the respondents and the petitioner has taken this false plea, just to mislead the court. It is argued that the petitioner has not specifically mentioned the number and memos of receipts, therefore, she cannot be permitted to place them on record or to get the same exhibited. It is submitted that the said receipts have been forged and fabricated, just to fill up the lacuna in the case. It is also contended that the order passed by the trial court is well reasoned and the instant petition is liable to be dismissed too.

5. I have heard learned counsel for the parties, apart from perusing

the record.

6. The learned trial court, by the impugned order dated 05.01.2013, while dismissing the application moved by the petitioner under Section 311 Cr.P.C. has observed as under;-

“I have heard the Ld. APP for the State as well as Ld. Counsel for the accused and have gone through the file carefully. Ld. APP for the State has argued that permission may be granted to place on record and got exhibited original receipts vide which dowry articles in question were purchased under Section 311 Cr.P.C. because it is very much necessary and essential for the proper and just decision of the case. On the other hand, ld. counsel for the accused has argued that it was duty of the prosecution to place on record these documents along with the challan and if the same be allowed at this stage, the accused has infringed his right to get copies of same in compliance of Section 207 Cr.P.C. because these documents are not made part and parcel of investigation/challan. I am agreed with the contention of the ld. Counsel for the accused and I am of the opinion that it was the duty of the prosecution/investigation officer to place on record such type of documents at initial stage. Now there is no stage to place on record such documents because in case this application may be allowed, the accused shall suffer an irreparable loss because they cannot change their stand/defence. So, the application is having no merits and same is hereby dismissed...”

7. Section 311 Cr.P.C. details with the power of the court to summon material witness, or examine person present, which reads as under;

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or. recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. The touchstone for exercise of powers under Section 311 Cr.P.C. is the satisfaction of the court that the evidence of any person, which comes to its notice, is essential for the just decision of the case. This power, under Section 311 Cr.P.C. can be exercised by the court at any stage of any inquiry, trial or other proceedings under the Code, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence whether documentary or oral. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 Cr.P.C.

9. In the case of ***Rajender Parsad vs. Narcotic Cell, Delhi, 1999 (3) RCR (Criminal) 440***, the Apex Court while dealing with the provisions of Section 311 Cr.P.C. observed as under;

“It is a common experience in criminal courts that defence counsel would raise objections whenever courts

exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to error is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such latches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trail of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can fore-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

10. A perusal of the observations given by the trial court reveals that the only reason for denying the application of the petitioner under Section 311 Cr.P.C. is that *"it was the duty of the prosecution/investigation*

officer to place on record such type of documents at initial stage. Now there is no stage to place on record such documents because in case this application may be allowed, the accused shall suffer an irreparable loss because they cannot change their stand/defence.” In other words, instead of deciding the basic question whether the documents sought to be produced by the petitioner are essential to the just decision of the case, the trial court went into the question that it was the duty of the prosecution/investigating officer to place on record the said documents and that it is not the stage to place on record these documents. The FIR in the instant case has been lodged by the petitioner-wife under Sections 406, 498-A of Indian Penal Code and by way of the application moved under Section 311 Cr.P.C. she sought permission to place on record the original receipts regarding purchase of dowry articles/*istridhan*. The trial in the instant case has just commenced and the petitioner will be put to the acid test of cross-examination.

11. A contention has been raised by learned counsel for the respondents that the receipts sought to be produced on record by the petitioner are forged and fabricated documents, just to fill lacuna of the case. However, the argument raised is not sustainable. It is settled proposition of law that mere production of documents does not mean that the documents produced or exhibited stand proved. Section 3 of the Indian Evidence Act, very clearly interprets the expression of the terms used as “**proved**” “**disproved**” and “**unproved**” in the said Act. In other words, if the petitioner is permitted to produce or exhibit the original receipts of the dowry articles/*istridhan* on record, these documents would have to be

exhibited as per the provisions of the Indian Evidence Act. In the opinion of this court, these documents are material to substantiate allegations of Section 406 Indian Penal Code. Further, no prejudice is going to be caused to the respondents-accused if the petitioner is permitted to produce these documents on record, as the trial has just commenced and the respondents-accused would have sufficient opportunity to cross-examine the petitioner and other witnesses and to lead their evidence in defence. Under these circumstances, this court is of the considered view that the documents sought to be produced by the petitioner are essential for the decision of the case.

12. In view of the foregoing discussion and ratio of law, the petition in hand is allowed and the impugned orders are hereby set aside.

13. Before parting with this order, this court cannot loose sight of the fact that the FIR in question pertains to the year 2007. As such, the trial court is directed to conclude the trial of the case as expeditiously as possible, preferably within a period of six months, from the date of receipt of this order.

14. It is made clear that anything observed or said by this court while deciding the instant petition shall have no affect on the merits of the case.

March 26, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No